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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Johnny Wheatcroft,

10 Plaintiff,

11 v.

12 City of Glendale, et al.,

13 Defendants.
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No. CV-18-02347-PHX-MTL

ORDER

15 Before the Court is Plaintiffs’ Motion Regarding the Conflict of Interest Among
16 Defendants (the “Motion”) (Doc. 233). Plaintiffs contend that they wish to discuss
17 “potential settlement and evidentiary issues” with certain individual defendants. (Doc.
18 233 at 3.) Plaintiffs argue that the nature of those discussions would create non-waivable
19 conflicts between Defendants who are represented by the same counsel. (*Id.* at 3–5.)
20 Plaintiffs therefore request that the Court issue an order requiring that separate counsel be
21 appointed to the individually named defendants. (Doc. 238 at 3.) Defendants respond to
22 this request by pointing out that Plaintiffs have failed to articulate the potential conflict of
23 interest. (Doc. 237 at 2–3.) Defendants argue that Plaintiffs have no standing to seek
24 disqualification and, in any event, presenting multiple settlement offers to co-defendants
25 would not create a concurrent conflict. (*Id.* at 5–10.) Defendants request fees and costs as
26 a sanction under Rule 11 of the Federal Rules of Civil Procedure for drafting a response.
27 (*Id.* at 11.)

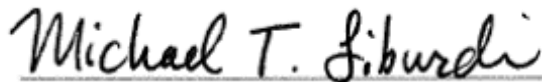
28 The moving party has the burden of proof in this context to prove a potential

1 conflict of interest or disqualification. *See Optyl Eyewear Fashion Int'l Corp. v. Style*
2 *Cos., Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985). While identifying a perceived problem
3 concerning a potential conflict of interest, Plaintiff does not convincingly articulate that
4 the Court has authority to order that the individual defendants engage separate counsel
5 for the limited purpose of negotiating settlement. Plaintiffs have failed to carry their
6 burden. Accordingly,

7 **IT IS ORDERED denying** Plaintiffs' Motion Regarding the Conflict of Interest
8 Among Defendants (Doc. 233).

9 **IT IS FURTHER ORDERED denying** Defendants' request for fees and costs
10 incurred in drafting the response.

11 Dated this 17th day of March, 2021.

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14 Michael T. Liburdi
15 United States District Judge
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